

Midstate Machine
(d.b.a. Mid-State Machine Products, McSwain Manufacturing
and Precision Holdings, LLC)

Purchasing Terms and Conditions

Exclusive Terms. This order, including the Terms and Conditions contained herein, is the complete and final agreement between the Seller and the Buyer for the sale and purchase of the goods identified on the Purchase Order for the Midstate Machine companies, hereafter referred to as “Buyer. This order may be construed as an offer or an acceptance of an offer. If this order is construed as an offer, it expressly limits acceptance by Seller to the Terms of this offer and constitutes notice of objection to any additional or different terms in the acceptance. If this order is construed as an acceptance, it is expressly conditioned on Seller’s assent to any additional or different Terms contained herein. All sections of the Uniform Commercial Code which expressly or impliedly protect a buyer are hereby incorporated by reference in this form. No action by Buyer shall be construed as acceptance of any additional or different terms in the Seller’s forms. Buyer may revoke this offer at any time prior to acceptance by Seller. Seller shall be deemed to have accepted this order by signing and returning the acknowledgement copy hereof or by other written indication of acceptance, by accepting any whole or partial payment from Buyer or by commencement of performance *provided* that, the only effect thereof shall be to accept this order on the Terms and Conditions hereof.

Acceptance. This order, when accepted by the Seller, shall constitute the entire contract between the Buyer and Seller as agreed to and shall not be altered, amended, supplemented, or cancelled without the written approval of the Buyer. No contrary or additional Terms and Conditions shall be applied to this order.

Price; F.O.B.; Risk of Loss. Unless specified on the Purchase Order to the contrary, the prices charged to Buyer (a) are F.O.B. Buyer’s premises, and (b) include packaging per Buyer’s instructions. No additional charges of any kind will be allowed unless specifically agreed to by Buyer in writing. Seller warrants that prices charged Buyer on this order shall be no higher than prices charged to its other customers. Risk of loss shall remain with the Seller until goods are delivered to the Buyer’s premises.

Indemnification. Seller agrees to defend, indemnify and hold Buyer, its employees, customers, successors and assigns, harmless against any claim demand, action, proceeding, liability, loss, cost or expense whatsoever, including attorney’s fees, arising in connection with any actual or alleged (a) defect in the goods, (b) failure by Seller to comply with Buyer’s specifications or with the express or implied warranties of Seller, (c) violation by the goods, or in their manufacture or sale, of any federal, state or local law, rule or regulation, (d) infringement of any patent, trademark, trade name, trade

secret, copyright or other property right by reason of the sale or use of the goods ordered, or (e) enforcement by Buyer of its rights hereunder. In the event of any claim, demand, action or proceeding being commenced against Buyer by reason of any of the above matters, Buyer shall give Seller prompt notice hereof in writing.

Warranty. Seller warrants that all goods and services provided pursuant to this order, whether provided by Seller or a direct or indirect supplier of the Seller, shall be free from all liens and encumbrances, shall comply with Buyer's specifications, samples, drawings, designs, descriptions or other requirements approved and adopted by the Buyer, shall be free from defects in design, materials and workmanship, and shall be new and of merchantable quality, not used, rebuilt or made of refurbished material unless approved in writing by the Buyer, and fit for the purposes for which such goods are intended. Any attempt by Seller to limit, disclaim or restrict any such warranties or remedies by acknowledgment or otherwise shall be null, void and ineffective.

Additions. No extra work, materials, additions or alterations will be paid for by the Buyer without prior written acceptance from the Buyer. Seller shall submit in writing to the Buyer, details of the request for additions prior to executing them.

Samples. Samples may be requested for inspection and approval prior to Seller fulfilling the full requirements of this order.

Patents. Seller warrants that the material delivered, either alone or in combination with other materials, will not infringe on any patents or other intellectual property rights in the United States or any foreign country.

Prices and Payments. All prices are firm and shall not be subject to change. Seller's price includes all payroll and/or occupational taxes, any value added tax that is not recoverable by Buyer and any other taxes, fees and/or duties applicable to the goods and/or services purchased under this order; provided, however, that any state and local taxes, use, excise and/or privilege taxes, if applicable, will not be included in the Seller's price but will be separately identified on the Seller's invoice. The Payment Start Date is the later of the required/due date identified on the order, the received date of the goods and/or services in the Buyer's receiving system or the date of receipt of valid invoice by Buyer.

Payment Terms. Unless agreed to in writing by the Buyer, payment terms are net 75 days from the payment start date identified above.

Required/Due Date. The required by or due date on the order is the date the goods are to be received at the Buyer's facility or other location specified on the order. In the case of services, the date on the order will be defined as either the starting date, to be completed date or the time span over which the service will be provided.

Inspection; rejection; remedies. Goods purchased hereunder are subject to inspection and approval at Buyer's destination notwithstanding any prior payment. Buyer may inspect the goods/services at Seller's premises. Buyer reserves the right to reject, refuse acceptance of, and withhold payment for goods which are not in compliance with Buyer's instructions and specifications, or with Seller's express or implied warranties. Goods not accepted will be held or returned to Seller at Seller's risk and expense. All remedies specified herein shall be cumulative in addition to all other or future remedies provide at law or in equity. Buyer may, at Seller's expense, a) require Seller to immediately re-perform any defective portion of the services and/or require Seller to immediately repair or replace non-conforming goods with goods that conform to all requirements of this order; b) take such actions as may be required to cure all defects and/or bring the goods and/or services into conformity with all requirements of this order, in which event, all related costs and expenses (including, but not limited to, material, labor and handling and any required re-performance of value added machining or other service) and other reasonable charges shall be for Seller's account; c) withhold total or partial payment; d) reject and return all or any portion of such goods and/or services; and/or e) rescind this order without liability.

Cancellation. Time is of the essence and Buyer may cancel this order, in whole or in part, without liability to Buyer if deliveries are not made at the time and in the quantities specified, or in the event of any other breach or failure of any of the Terms and Conditions hereof, or for the convenience of the Buyer any time prior to shipment of the goods by the Seller.

Changes. Buyer at any time may make changes in the quantities ordered or in the specifications or drawings relating to the goods, or may change or amend any other Term or Condition of this order. Any claim for actual losses incurred by Seller due to any such change must be made 10 days from the date of receipt of such change.

Compliance with Laws. Seller shall comply with all applicable federal, state and local laws, regulations and orders, and, in the case of goods or services made or rendered in a foreign country, with those applicable laws as well. Without limiting the foregoing, Seller warrants that the goods shall be produced in compliance with and shall meet all applicable requirements and standards of the Fair Labor Standards Act and the regulations and orders of the United States Department of Labor issued there under, the Occupational Health and Safety Act, and applicable affirmative action laws.

Confidentiality. Seller agrees not to utilize or disclose to others any confidential information, drawings or data, whether or not designated as such, supplied, furnished or disclosed to Seller by Buyer except as reasonably required for the purpose of filling this order. Seller shall immediately return any such confidential materials to Buyer at Buyer's request.

Assignment. Seller shall not assign or subcontract any of its rights, duties or obligations under this order without Buyer's prior written consent. Such consent shall

not relieve Seller from its obligations, from liability for breach or from any duty to perform. Buyer may assign any or all of its rights, duties, or obligations under this order without Seller's prior written consent if Buyer sells, spins off, or otherwise disposes of the division or product line which is the primary beneficiary of this order or if the Buyer merges with or into another company, or is otherwise acquired by a third party.

Waiver. Waiver by Buyer of a breach by Seller of any provision of this order shall not be deemed a waiver of any other provision of or future compliance with all provisions of this order, and all such provisions shall remain in full force and effect. The Buyer's failure to exercise any of its rights hereunder or to insist upon strict performance of any of the Terms and Conditions stated herein shall not be considered as a waiver of any such Term or Condition, any other Term or Condition, or any of the Buyer's rights.

Controlling Law. For Mid-State Machine Products the transaction shall be governed by, and this agreement shall be construed and enforced in accordance with, the internal laws of the State of Maine. The sole and exclusive venues for any action relating to this agreement or to the goods shall be the United States District Court for the State of Maine or the Circuit Court for and in Kennebec County, Maine. For Machine Industries and MB Precision Company, the transaction shall be governed by, and this agreement shall be construed and enforced with the internal laws of the State of Massachusetts. The sole and exclusive venues for any action relating to this agreement or to the goods shall be the applicable United States District Court for the State of Massachusetts or the applicable Massachusetts Trial Court for the County of Hampden.

Force Majeure. The consequences, direct or indirect, of labor disputes, fires, floods, acts of God, war or any other cause or condition beyond the reasonable control of Buyer or Seller, shall excuse performance to the extent which such performance has been prevented by such occurrence. In the event that either party shall be unable to perform any of its obligations, it shall advise the other of its inability to perform. If the cause is not removed within 60 days, Buyer, in addition to its other remedies, may cancel this order.

Services. If Seller is to perform any services on the premises of the Buyer, Seller shall indemnify and hold Buyer harmless from any claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the provision of such services, including, but not limited to, injury to employees of Seller or to third parties or damage to property. Prior to the performance of such services, Seller shall provide Buyer with certificates showing the following types of insurance in such amounts and by insurance carriers acceptable to Buyer: Worker's compensation, public liability, property damage, automobile, pressure vessel and such other special coverage as conditions may require.

Hazardous Materials. Before any chemical, material or equipment that contains a chemical is permitted to be brought into or onto a Buyer facility, a Material Safety Data Sheet (MSDS) must be forwarded to the plant safety engineer who will complete a review and approve or reject the acceptance of the shipment(s). Shipment(s) made to

buyer facility not following this procedure will be rejected at Buyer's dock and returned to Seller at its sole expense and liability.

Equal Opportunity/ Affirmative Action Clause.

Midstate Machine

Midstate Machine is a federal contractor. As a result, the Equal Opportunity Clause set forth in 41 C.F.R. parts 60.1.4(a), and the employee notice found at 29 C.F.R. Part 471, Appendix A to Subpart A are incorporated by reference herein. In addition, but only if applicable, **Seller shall abide by the requirements of 41 C.F.R. §§60-300.5(a) and 60.741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.**